

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 10-1993 CW

JUST FILM, INC.; RAINBOW BUSINESS
SOLUTIONS, doing business as
PRECISION TUNE AUTO CARE; BURLINGAME
MOTORS, INC.; DIETZ TOWING, INC.; THE
ROSE DRESS, INC.; VOLKER VON
GLASENAPP; JERRY SU; VERENA
BAUMGARTNER; TERRY JORDAN; ERIN
CAMPBELL; and LEWIS BAE, on behalf of
themselves, the general public and
those similarly situated,

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL
PAYMENT PROCESSING; UNIVERSAL
MERCHANT SERVICES LLC; UNIVERSAL
CARD, INC.; JASON MOORE; NATHAN
JURCZYK; ROBERT PARISI; ERIC
MADURA; FIONA WALSH; ALICYN ROY; MBF
LEASING LLC; NORTHERN FUNDING LLC;
NORTHERN LEASING SYSTEMS, INC.;
GOLDEN EAGLE LEASING LLC; LEASE
SOURCE-LSI, LLC; LEASE FINANCE GROUP,
LLC; JAY COHEN; LEONARD MEZEI; SARA
KRIEGER; BRIAN FITZGERALD; SAM BUONO;
MBF MERCHANT CAPITAL, LLC; RBL
CAPITAL GROUP, LLC; WILLIAM HEALY;
JOSEPH I. SUSSMAN; JOSEPH I. SUSSMAN,
P.C.; and SKS ASSOCIATES, LLC,

Defendants.

ORDER GRANTING
PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION AND
DENYING DEFENDANT
SKS ASSOCIATES,
LLC'S MOTION TO
COMPEL ARBITRATION
OF PLAINTIFF ERIN
CAMPBELL'S CLAIMS
(Docket Nos. 208 and
253)

AND ALL RELATED CROSS-CLAIMS

On April 8, 2011, pursuant to the ex parte application of
Plaintiffs Just Film, et al., the Court entered a temporary

1 restraining order (TRO) against Defendant SKS Associates.
2 Plaintiffs' application was based on SKS's conduct with respect to
3 Plaintiff Erin Campbell. Plaintiffs now seek a preliminary
4 injunction against SKS. SKS opposes the motion and moves to compel
5 arbitration of Campbell's claims against it. The motions were
6 heard on June 2, 2011. Having considered oral argument and the
7 papers submitted by the parties, the Court GRANTS Plaintiffs'
8 motion and DENIES SKS's motion.

9 BACKGROUND

10 Plaintiffs bring claims against twenty-seven Defendants based
11 on alleged misconduct related to credit card processing services
12 and equipment finance leases. Plaintiffs intend to bring this
13 action on behalf of a class of individuals and business similarly
14 situated.

15 The current motions concern only Campbell's claims against
16 SKS. She is the only Plaintiff who has had interactions with SKS.
17 Only the background necessary to resolve these motions is provided
18 below.

19 SKS is a New York limited liability company. It was
20 originally formed in December 2008 under the name Lease Residual
21 Holdings (OFC), LLC. On March 11, 2011, Lease Residual Holdings
22 changed its name to SKS Associates LLC.

23 SKS is allegedly owned by Defendant Northern Leasing Systems,
24 Inc., which also purportedly owns Defendants MBF Leasing LLC;
25 Golden Eagle Leasing LLC; Lease Source-LSI, LLC; and Lease Finance
26 Group, LLC. Plaintiffs refer to all of these entities as the
27 Northern Leasing Companies. Plaintiffs allege that the assets of
28 the Northern Leasing Companies are commingled and that they are

1 alter egos of each other. According to Plaintiffs, Defendants Jay
2 Cohen, president and chief executive officer of Northern Leasing;
3 Leonard Mezei, chairman of the board of Northern Leasing; Sara
4 Krieger, vice president for operations of Northern Leasing; Brian
5 Fitzgerald, MBF Leasing's former executive vice president for
6 business development; Sam Buono, former vice president of
7 collections and customer service at Northern Leasing and MBF
8 Leasing; and Joseph I. Sussman, an attorney, directed and
9 controlled the Northern Leasing companies. Plaintiffs refer to
10 these individuals as "Northern Leasing Companies Control Persons."
11 2d Am. Compl. (2AC) ¶ 36.

12 On or about September 12, 2002, Campbell entered into an
13 Equipment Finance Lease (EFL) with Lease Finance Group on behalf of
14 her business, Silicon Valley Pet Clinic. The EFL provided for a
15 lease term of forty-eight months and required monthly payments of
16 \$79.95 per month. The EFL also included the following provisions:

17 10. NET LEASE: TAXES. You intend the rental payments
18 hereunder to be net to us, and you agree to pay all
19 sales, use, excise, personal property, stamp, documentary
20 and ad valorem taxes, license and registration fees,
21 assessments, fines, penalties and similar charges imposed
22 on the ownership, possession or use of the Property
23 during the term of this Lease; shall pay all taxes
(except our Federal or State net income taxes) imposed on
24 you or us with respect to the rental payments hereunder
or the ownership of the Property; and, shall reimburse us
upon demand for any taxes paid by or advanced by us.
Unless otherwise agreed to in writing, you shall file
personal property tax returns with respect to the
Property. . . .

25 18. END OF LEASE TERM. At the expiration or earlier
26 termination of the Lease Term, you have the following
27 options: (1.) You shall disconnect and return the
28 Equipment and/or Software, freight prepaid, to us in good
repair, condition and working order, in a manner and to a
location we designate and all Lessee's right to use the
Software shall terminate. (2.) Lessor extends an option
to purchase the equipment at the end of the term for fair

1 market value, which is estimated to be 10% of the Lease
2 term times monthly Lease payment (excluding taxes) and
3 return the Software in accordance with option 1.
4 (3.) You can extend upon all the terms and conditions as
5 stated herein for a period of one month from its
6 expiration date without the necessity of the execution of
7 any further instrument or document. At the end of this
8 additional month, options 1, 2, and 3 are again available
9 to you. Unless you notify us in writing 30 days prior to
10 the expiration of the Lease Term, or monthly renewal
11 period, you shall have been deemed to have chosen option
12 3 (Automatic Renewal for one month). . . .

13 21. CHOICE OF LAW; ARBITRATION: Any claim or controversy
14 including any contract or tort claim, between or among
15 us, you or any Guarantor related to this Lease, shall be
16 determined by binding arbitration in accordance with
17 Title 9 of the U.S. Code and the Commercial Arbitration
18 Rules of the American Arbitration Association. All
19 statutes otherwise applicable shall apply. Judgment upon
20 the arbitration award may be entered in any court having
21 jurisdiction. In event you or Guarantor Defaults, these
22 provisions regarding arbitration shall not apply to our
23 right to repossess the Equipment. This Lease is made in
24 interstate commerce. Any arbitration shall take place in
25 Chicago, Illinois.

26 Krieger Decl. in Support of Mot. to Compel Arbitration (Krieger
27 Arbitration Decl.), Ex. 1, at 3. In contrast to the EFLs of
28 Plaintiffs Volker Von Glasenapp and Just Film, Terry Jordan and
Dietz Towing, Lewis Bae and the Rose Dress, and Verena Baumgartner
and Burlingame Motors, Campbell's EFL did not expressly provide
that her obligation to pay any taxes or similar charges survived
the term of the EFL. Mirsky Decl. in Support of Opp'n to Mot. for
Preliminary Injunction (Mirsky Injunction Decl.) ¶ 27.

Over the term of her lease, Campbell allegedly paid \$9.78 for
property taxes. She closed her account with Lease Finance Group in
June 2007.

On or about March 9, 2011, Campbell received a letter from
SKS, which stated,

Recently SKS Associates acquired all of the rights, title
and interest in certain leases owned by Lease Finance

1 Group, LLC and a lease you entered into with Lease
2 Finance Group, LLC was part of that acquisition.

3 An audit was conducted on your account and it was
4 determined certain taxes and related fees due were either
5 not collected or under collected. In accordance with the
6 terms of your lease agreement (section Net Lease: Taxes),
7 you are required to pay all taxes and related filing
costs pertaining to the equipment you leased from Lease
Finance Group, LLC. The amount owed is \$85.50, which
includes tax processing and filing fees. In order to
collect the amount owed under the lease, we intend to
debit your account on or about 3/15/2011. . . .

8 Campbell Decl., Ex. A. Thereafter, SKS attempted to debit
9 Campbell's bank account. Because Campbell had closed the account
10 in 2007, SKS was not able to withdraw any funds. However,
11 Plaintiffs allege that, in early March 2011, SKS was successful in
12 debiting "hundreds or thousands of class members' bank accounts for
13 fraudulent sums of money, using the bank account information these
14 class members had provided to the original lessor." 2AC ¶ 280.

15 SKS proffers the declaration of Jonathan Mirsky, vice
16 president of Cucumber Holdings, Inc., which is the "manager" of
17 SKS. Mirsky Injunction Decl. ¶ 1. According to Mirsky, in
18 December 2010, SKS purchased assets from Northern Leasing,
19 including Northern Leasing's "right to receive reimbursement" of
20 taxes and administrative fees afforded under certain EFLs
21 "identified in Schedule 1 to the Purchase Agreement." SKS paid \$6
22 million for these assets, \$100,000 of it in advance. Under the
23 Purchase Agreement, SKS is to pay the remaining \$5.9 million "from
24 amounts collected with respect to the Tax Payments in accordance
25 with the terms of the Servicing Agreement." Id., Ex. 1, at 6.

26 The Servicing Agreement provides that Lease Finance Group is
27 charged with collecting on the leases on behalf of SKS. As
28 compensation, Lease Finance Group receives four percent of the net

1 collections. The Servicing Agreement distributes any collections
2 received as follows: first, to Lease Finance Group to pay servicing
3 fees; second, to Northern Leasing "until the amount of the Purchase
4 Price outstanding has been reduced to zero;" and, finally, to SKS.
5 Mirsky Injunction Decl., Ex. 1, at 15.

6 Mirsky did not include as part of his declaration Schedule 1
7 of the Purchase Agreement which, as noted above, listed the EFLs
8 for which SKS purchased rights. On April 29, 2011, counsel for SKS
9 sent Plaintiffs' counsel a "zipped file containing Schedule 1."
10 Simplicio Decl. in Support of Reply in Support of Mot. for
11 Preliminary Injunction (Simplicio Injunction Decl.), Ex. E, at 2.
12 The file consisted of 1457 pages and a table with various headings,
13 including "Lease #." Id., Ex. F. On May 2, 2011, Plaintiffs
14 proffered a printout from the file as part of their reply in
15 support of their motion for a preliminary injunction. In their
16 reply, Plaintiffs noted that the file did not contain any number
17 associated with Campbell's EFL. On May 3, 2011, counsel for
18 Defendants provided Plaintiffs' counsel with a new Schedule 1.
19 According to Plaintiffs' counsel, the new Schedule 1 contained
20 seventy-five records per page, whereas the April 29 version had
21 only forty-five record per page. Further, the new Schedule 1
22 reflected Campbell's lease.

23 Campbell brings claims under the Racketeer Influenced and
24 Corrupt Organizations Act (RICO). She charges SKS, along with the
25 other Northern Leasing Companies and the Northern Leasing Companies
26 Control Persons, with conducting and participating in a RICO
27 enterprise through a pattern of racketeering activity, in violation
28 of 18 U.S.C. § 1962(c), and conspiring to engage in a pattern of

1 racketeering activity, in violation of 18 U.S.C. § 1962(d). She
2 alleges two predicate acts. First, she pleads that these
3 Defendants committed mail fraud by, among other things, "advising
4 class members of audits conducted on their account and past due
5 property taxes, when no such audit had been conducted and no taxes
6 were due." 2AC ¶ 560. She also pleads that these Defendants
7 committed wire fraud by, among other things, using "old ACH
8 withdrawal forms to withdraw amounts from merchants' bank accounts
9 nationwide." Id. ¶ 580.

10 On April 8, 2011, the Court issued a TRO prohibiting SKS from
11 "engaging in any collection of any funds, or related collection
12 activity, based upon expired, cancelled, or otherwise terminated
13 equipment lease agreements" and "making any reports to any credit
14 reporting agencies regarding any collection of any funds based upon
15 expired, cancelled, or otherwise terminated equipment lease
16 agreements." Order of Apr. 8, 2011. Pursuant to SKS's
17 stipulations, the TRO was extended through June 2, 2011. At the
18 hearing on the parties' current motions, the Court extended the TRO
19 until the date that a preliminary injunction issued.

20 DISCUSSION

21 I. SKS's Motion to Compel Arbitration

22 Under the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 et
23 seq., written agreements that controversies between the parties
24 shall be settled by arbitration are valid, irrevocable and
25 enforceable. 9 U.S.C. § 2. A party aggrieved by the refusal of
26 another to arbitrate under a written arbitration agreement may
27 petition the district court which would, save for the arbitration
28 agreement, have jurisdiction over that action, for an order

1 directing that arbitration proceed as provided for in the
2 agreement. Id. § 4. The FAA further provides that:

3 If any suit or proceeding be brought in any of the courts
4 of the United States upon any issue referable to
5 arbitration under an agreement in writing for such
6 arbitration, the court in which such suit is pending,
7 upon being satisfied that the issue involved in such suit
8 or proceeding is referable to arbitration under such an
9 agreement, shall on application of one of the parties
10 stay the trial of the action until such arbitration has
11 been had in accordance with the terms of the
12 agreement

13 Id. § 3.

14 If the court is satisfied "that the making of the arbitration
15 agreement or the failure to comply with the agreement is not in
16 issue, the court shall make an order directing the parties to
17 proceed to arbitration in accordance with the terms of the
18 agreement." Id. § 4.

19 The FAA reflects a "liberal federal policy favoring
20 arbitration agreements." Gilmer v. Interstate/Johnson Lane Corp.,
21 500 U.S. 20, 25 (1991) (quoting Moses H. Cone Mem. Hosp. v. Mercury
22 Constr. Corp., 460 U.S. 1, 24 (1983)). A district court must
23 compel arbitration under the FAA if it determines that: (1) there
24 is a valid agreement to arbitrate; and (2) the dispute falls within
25 its terms. Stern v. Cingular Wireless Corp., 453 F. Supp. 2d 1138,
26 1143 (C.D. Cal. 2006) (citing Chiron Corp. v. Ortho Diagnostic
27 Sys., 207 F.3d 1126, 1130 (9th Cir. 2000)). "Unless the parties
28 clearly and unmistakably provide otherwise, the question of whether
the parties agreed to arbitrate is to be decided by the court, not
the arbitrator." AT&T Techs., Inc. v. Commun'cs Workers of Am.,
475 U.S. 643, 649 (1986) (citations omitted).

The arbitrability of a claim may depend on whether the

1 contract providing for arbitration has expired. See Litton Fin.
2 Printing Div. v. NLRB, 501 U.S. 190, 205-09 (1991); see also
3 Operating Eng'rs Local Union No. 3 v. Newmont Mining Corp., 476
4 F.3d 690, 693-94 (9th Cir. 2007). The "dead hand of a long-expired
5 arbitration clause cannot govern forever." Kroll v. Doctor's
6 Assocs., 3 F.3d 1167, 1169 (7th Cir. 1993) (citing Local 703, Int'l
7 B'hood of Teamsters v. Kennicott Brothers Co., 771 F.2d 300 (7th
8 Cir. 1985)). A claim "'arise[s] under the contract,' and therefore
9 subjects the parties to arbitration, if (1) 'it involves facts and
10 occurrences that arose before expiration,' (2) 'an action taken
11 after expiration infringes a right that accrued or vested under the
12 agreement,' or (3) 'under normal principles of contract
13 interpretation, the disputed contractual right survives expiration
14 of the remainder of the agreement.'" Newmont, 476 F.3d at 693
15 (quoting Litton, 501 U.S. at 206).

16 Although there is a general presumption in favor of
17 arbitrability, it does not apply "wholesale in the context of an
18 expired . . . agreement, for to do so would make limitless the
19 contractual obligation to arbitrate." Litton, 501 U.S. at 209.

20 SKS cannot compel arbitration of Campbell's claims because
21 they do not arise under her lease agreement, which has expired. As
22 noted above, the lease had a fixed term of forty-eight months, but
23 provided for renewal on a month-to-month basis if Campbell did not
24 notify Lease Finance Group of her intention to cancel the lease.
25 Campbell entered into her lease in September 2002 and apparently
26 maintained the lease until June 2007. SKS's alleged misconduct
27 took place in March 2011. Campbell's RICO claims are not based on
28 any dispute regarding the lease, but rather on SKS's allegedly

1 fraudulent attempt to extract funds from her bank account
2 approximately four years after the lease ended.

3 Indeed, SKS offers no evidence that this post-expiration
4 dispute concerns conduct that occurred before June 2007 or that
5 Campbell's lease is implicated. There is no indication as to when
6 Campbell incurred the \$85.50 that she purportedly owes for "tax
7 processing and filing fees." Nor does the record indicate why
8 these fees were assessed, if they were. Campbell's lease obligated
9 her to pay taxes and "similar charges . . . imposed on the
10 ownership, possession or use of the Property during the term of
11 this Lease." Krieger Decl. in Support of Mot. to Compel
12 Arbitration (Krieger Arbitration Decl.), Ex. 1, at 3. The \$85.50
13 SKS seeks to collect does not appear to be for taxes or related
14 fees, nor is there evidence that this amount is for taxes or fees
15 assessed during the lease's term. Thus, it is not apparent that
16 the amount charged was pursuant to the lease. Notably, Mirsky
17 points out that EFLs other than Campbell's provided that a lessee's
18 obligation to pay taxes and processing fees persisted despite the
19 expiration of the lease. No such provision appears in Campbell's
20 lease.

21 SKS cites Sweet Dreams Unlimited v. Dial-A-Mattress
22 International, Ltd., 1 F.3d 639 (7th Cir. 1993), for the
23 proposition that the failure to exclude post-termination disputes
24 from the scope of an arbitration clause demonstrates an intent to
25 arbitrate. SKS relies on a section of Sweet Dreams which was based
26 on Nolde Brothers, Inc. v. Local No. 358, Bakery and Confectionery
27 Workers Union, in which the Supreme Court held that "where the
28 dispute is over a provision of the expired agreement, the

1 presumptions favoring arbitrability must be negated expressly or by
 2 clear implication." 430 U.S. 243, 255 (1977). This rule was
 3 clarified in Litton, in which the Supreme Court held that the
 4 "Nolde Brothers presumption is limited to disputes arising under
 5 the contract." 501 U.S. at 205; see also Homestead Lake Co. of Mo.
 6 v. Doe Run Resources Corp., 282 F. Supp. 2d 1131, 1140 n.3 (N.D.
 7 Cal. 2003). As noted above, Campbell's RICO claims do not arise
 8 from her expired lease.¹

9 Accordingly, SKS's motion to compel arbitration must be
 10 denied.

11 II. Plaintiffs' Motion for a Preliminary Injunction

12 "A plaintiff seeking a preliminary injunction must establish
 13 that he is likely to succeed on the merits, that he is likely to
 14 suffer irreparable harm in the absence of preliminary relief, that
 15 the balance of equities tips in his favor, and that an injunction
 16 is in the public interest." Winter v. Natural Res. Def. Council,
 17 Inc., ___ U.S. ___, 129 S. Ct. 365, 374 (2008). Alternatively, "a
 18 preliminary injunction could issue where the likelihood of success
 19 is such that serious questions going to the merits were raised and
 20 the balance of hardships tips sharply in plaintiff's favor," so
 21 long as the plaintiff demonstrates irreparable harm and shows that
 22 the injunction is in the public interest. Alliance for the Wild
 23 Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation

24
 25 ¹ Indeed, although the court held the plaintiff's claims to be
 26 subject to an arbitration clause contained in an expired agreement,
 27 it noted that it "would be presented with a different and more
 28 difficult question if the disputes had arisen a significant time
 after the expiration of the Agreement." Sweet Dreams, 1 F.3d at
 643. Here, Campbell's claims are based on alleged conduct that was
 committed almost four years after her lease expired.

1 and internal quotation and editing marks omitted).

2 A court employs a sliding scale when considering a plaintiff's
3 showing as to the likelihood of success on the merits and the
4 likelihood of irreparable harm. Id. "Under this approach, the
5 elements of the preliminary injunction test are balanced, so that a
6 stronger showing of one element may offset a weaker showing of
7 another." Id.

8 A. Likelihood of Success on the Merits

9 SKS contends that a preliminary injunction is not warranted
10 because "Plaintiffs have not established that SKS's collections
11 efforts are wrongful." SKS Opp'n to Pls.' Mot. for Preliminary
12 Injunction at 7:5-6. SKS also argues that, because Campbell's
13 claims are subject to arbitration, she cannot represent the
14 putative class.

15 Plaintiffs' allegations and the current record show that
16 Campbell has a likelihood of prevailing on her claims. Plaintiffs
17 plead that SKS is debiting or attempting to debit numerous
18 individuals' bank accounts for amounts not owed to it. They
19 proffer a letter sent by SKS to Campbell stating that, pursuant to
20 the "Net Lease: Taxes" section of her EFL, she owes SKS "\$88.50,
21 which includes tax processing and filing fees." Campbell Decl. in
22 Support of Mot. for Preliminary Injunction, Ex. A. However, the
23 cited EFL provision does not indicate that she is liable for such
24 fees. Indeed, SKS apparently did not provide Campbell with a copy
25 of her EFL when she initially requested it following receipt of
26 SKS's letter.

27 Furthermore, SKS's conduct in this litigation also raises
28 serious questions. As noted above, on April 29, 2011, SKS produced

1 to Plaintiffs' counsel Schedule 1 of the SKS-Northern Leasing
2 Purchase Agreement, which purportedly listed all the leases for
3 which SKS purchased rights. On May 2, 2011, Plaintiffs pointed out
4 in their reply in support of their motion for a preliminary
5 injunction that the document did not reflect Campbell's lease. The
6 next day, SKS produced a new Schedule 1, which listed additional
7 leases, including Campbell's.

8 Plaintiffs also establish that the balance of hardships tips
9 sharply in Campbell's favor. Campbell represents that SKS
10 threatened to refer her purported debt to a collection agency and
11 that her credit report would be negatively affected. Although
12 Mirsky now represents that SKS will not make such a report, this
13 does not mean that, during the pendency of this action, Campbell
14 will not be subject to SKS's collection efforts. SKS contends that
15 it will suffer hardship because, if enjoined from collecting on the
16 leases it purchased, it will be effectively "shut down." Mirsky
17 Injunction Decl. ¶ 24. However, the Court's preliminary injunction
18 will prohibit SKS only from directly debiting bank accounts of
19 individuals with expired, cancelled or otherwise terminated
20 equipment lease agreements; the injunction does not prohibit all
21 collection activity. Furthermore, there is no evidence that SKS is
22 an independent entity with employees who may be affected negatively
23 by an injunction. Indeed, Lease Finance Group, not SKS, is the
24 entity collecting on the leases. Based on Campbell's and SKS's
25 respective showings, the balance of hardships favor Campbell.

26 Accordingly, Plaintiffs make an adequate showing with respect
27 to the merits of Campbell's claims.
28

1 B. Likelihood of Irreparable Harm

2 SKS contends that Campbell cannot suffer irreparable harm
3 because money damages are available. Plaintiffs argue that
4 Campbell is likely to suffer irreparable harm because she may not
5 be able to collect on any judgment against SKS, which they allege
6 to be a shell company. SKS also argues that Campbell has not
7 suffered damage because it was unsuccessful in extracting funds
8 from Campbell's bank account.

9 Although the availability of money damages generally precludes
10 a finding of irreparable harm, this rule does not apply "when it is
11 shown that a money judgment will go unsatisfied absent equitable
12 relief." Alvenus Shipping Co., Ltd. v. Delta Petroleum (U.S.A.)
13 Ltd., 876 F. Supp. 482, 487 (S.D.N.Y. 1994) (citing Hoxworth v.
14 Blinder, Robinson & Co., Inc., 903 F.2d 186, 205 (3d Cir. 1990)).
15 Here, Plaintiffs have alleged sufficient facts to support their
16 assertion that SKS is a shell company from which Campbell and
17 putative class members may not be able to collect. Indeed, the
18 Purchase and Servicing Agreements support Plaintiffs' skepticism
19 regarding SKS's corporate status. These documents show that,
20 although SKS purchased the rights to the leases from Northern
21 Leasing, Northern Leasing and Lease Finance Group, the original
22 lessor, will nevertheless receive the monies from SKS's collection
23 activities. Further, Plaintiffs proffer some evidence of SKS's
24 relationship with the other Northern Leasing Companies. Bautista-
25 Perez v. Keisler, 2007 WL 3037611 (N.D. Cal.), does not support
26 SKS's position. There, the court rejected as speculative the
27 plaintiffs' contention that they might suffer irreparable harm
28 because the United States government "may not have funds available

1 to pay restitution." Id. at *7. Plaintiffs do not make such a
2 speculative argument.

3 That Campbell's bank account was not debited the \$88.50 does
4 not eliminate the likelihood of irreparable harm. As noted above,
5 this action is brought on behalf of others similarly situated.
6 These absent individuals may have monies debited from their bank
7 accounts that they may be unable to recover. Further, in the
8 absence of an injunction, SKS may again attempt to debit Campbell's
9 account.

10 Accordingly, Plaintiffs establish a likelihood of irreparable
11 harm justifying a preliminary injunction.

12 C. Public Interest

13 Plaintiffs contend that a preliminary injunction is in the
14 public interest because SKS's alleged fraud is ongoing and has
15 targeted various small businesses nationwide. SKS does not argue
16 that the public interest prong is not met. Accordingly, the Court
17 concludes that Plaintiffs establish that the public interest weighs
18 in favor of issuing a preliminary injunction.

19 D. Bond and Scope of Preliminary Injunction

20 SKS asks the Court to require Plaintiffs to post a bond of \$6
21 million in connection with their requested preliminary injunction.
22 SKS also maintains that the scope of any preliminary injunction
23 must be limited to Campbell.

24 Courts have wide discretion to require an applicant to post a
25 bond in support of a preliminary injunction. Johnson v. Couturier,
26 572 F.3d 1067, 1086 (9th Cir. 2009). A court "may dispense with
27 the filing of a bond when it concludes there is no realistic
28 likelihood of harm to the defendant from enjoining his or her

1 conduct." Id. (citation and internal quotation marks omitted).
2 Here, SKS has not justified the necessity of a \$6 million bond.
3 SKS proffers no evidence that it will be unable to continue its
4 collection efforts in the event that this litigation is resolved in
5 its favor.

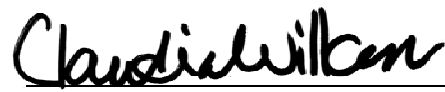
6 Generally, preliminary injunctive relief "should be limited to
7 apply only to named plaintiffs where there is no class
8 certification," unless extending such relief to an absent class is
9 necessary "to give prevailing parties the relief to which they are
10 entitled." Easyriders Freedom F.I.G.H.T. v. Hannigan, 92 F.3d
11 1486, 1501-02 (9th Cir. 1996) (citations and internal quotation
12 marks and emphasis omitted); see also L.A. Haven Hospice, Inc. v.
13 Sebelius, 638 F.3d 644, 664 (9th Cir. 2011). Although a class has
14 not yet been certified, the circumstances of this case support
15 broad preliminary injunctive relief. As explained above,
16 Plaintiffs have established a likelihood of irreparable harm to
17 Campbell and the putative class. Accordingly, the Court provides
18 preliminary injunctive relief. This relief will be narrowed in the
19 event Plaintiffs are not able to justify certification of a class.

20 CONCLUSION

21 For the foregoing reasons, the Court GRANTS Plaintiffs' motion
22 for a preliminary injunction (Docket No. 208) and DENIES SKS's
23 motion to compel arbitration (Docket No. 253). A preliminary
24 injunction will issue as a separate order.

25 IT IS SO ORDERED.

26
27 Dated: 6/13/2011



CLAUDIA WILKEN
United States District Judge